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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 RENOVATION REALTY, INC.,
12 Plaintiff,
13 v.
14 NATHAN ESPLANADE,
15 Defendant.
16

NO. 13-CV-396-MMA (BLM)

**ORDER DENYING
DEFENDANT'S MOTION TO
PROCEED *IN FORMA*
PAUPERIS ON APPEAL**

[Doc. No. 36]

17 Currently before the Court is Defendant Nathan Esplanade's motion to
18 proceed *in forma pauperis* ("IFP") on appeal. For the reasons set forth below, the
19 Court **DENIES** Defendant's motion.

20 Federal Rule of Appellate Procedure 24 sets forth the requirements for a party
21 to proceed IFP on appeal. *See* Fed. R. App. P. 24. Pursuant to Rule 24,

22 . . . a party to a district-court action who desires to appeal in forma
23 pauperis must file a motion in the district court. The party must attach an
24 affidavit that: (A) shows in the detail prescribed by Form 4 of the
Appendix of Forms the party's inability to pay or to give security for fees
and costs; (B) claims an entitlement to redress; and (C) states the issues
that the party intends to present on appeal.

25 Fed. R. App. P. 24(a)(1).
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27 Defendant has not satisfied the requirements of Rule 24(a)(1). Although
28 Defendant has submitted an affidavit in support of his motion to proceed IFP, the

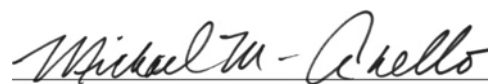
1 affidavit states he has received social security, disability, or other welfare but does
2 not indicate the amount. *See* Fed. R. App. P. 24(a)(1)(A). Defendant also fails to
3 state the issues that he intends to present on appeal in his affidavit, as required by
4 Fed. R. App. P. 24(a)(1)(C). Because Defendant has not satisfied the requirements
5 of Rule 24(a)(1), he is not entitled to proceed IFP on appeal. *See* Fed. R. App. P.
6 24(a)(1). The Court therefore **DENIES** Defendant's motion.

7 The Court also notes that Defendant's motion to proceed IFP on appeal should
8 be denied under 28 U.S.C. § 1915(a)(3). "An appeal may not be taken in forma
9 pauperis if the trial court certifies in writing that it is not taken in good faith." 28
10 U.S.C. § 1915(a)(3). "In the absence of some evident improper motive, the
11 applicant's good faith is established by the presentation of any issue that is not
12 plainly frivolous." *Ellis v. United States*, 356 U.S. 674 (1958). An action is
13 frivolous "where it lacks an arguable basis either in law or in fact." *Neitzke v.*
14 *Williams*, 490 U.S. 319, 325 (1989). Here, Defendant's appeal is not based on valid
15 grounds. Accordingly, the Court certifies that any appeal taken from the Court's
16 September 20, 2013 Order will not be taken in good faith and is therefore frivolous.
17 *See* 28 U.S.C. § 1915(a)(3).

18 The Clerk of Court shall immediately notify the parties and the Court of
19 Appeals of this Order. *See* Fed. R. App. P. 24(a)(4). Plaintiff may file a motion for
20 leave to proceed IFP on appeal in the Court of Appeals within thirty days after
21 service of notice of this Order. *See* Fed. R. App. P. 24(a)(5). Any such motion
22 "must include a copy of the affidavit filed in the district court and the district court's
23 statement of reasons for its action." *Id.*

24 **IT IS SO ORDERED.**

25
26 DATED: November 4, 2013



27 Hon. Michael M. Anello
28 United States District Judge